

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-184149

DATE: November 6, 1975

MATTER OF: Evergreen Funeral Home

DIGEST:

In absence of timely protest against size status of low bidder which had certified itself to be small business, contracting officer had authority to accept bidder's certification and award to that firm was proper.

Evergreen Funeral Home (Evergreen) has protested the award of a contract to Swan Funeral Home (Swan) under invitation for bids (IFB) No. DAKF06-75-B-0108, a 100-percent small business set-aside, issued by the Procurement Division, Fort Carson, Colorado. The contract consolidated the requirements of the Army, Navy and Air Force for mortuary services in the Colorado Springs, Colorado, area.

Evergreen's protest is based on the allegation that Swan is "other than small business" for purposes of this procurement and should not have been considered for award.

The IFB classified a concern bidding as a small business if the average annual receipts of the concern and its affiliates for the preceding 3 fiscal years did not exceed \$1 million. Bids were opened on April 17, 1975, with Swan as the apparent low bidder. Swan had self-certified itself as a small business concern by checking the appropriate box on Standard Form 33. On May 8, 1975, Evergreen verbally protested the size status of Swan to the contracting officer and followed this action with a written protest on May 12, 1975. The protest was forwarded by the contracting officer to the Small Business Administration Regional Office (SBA), Denver, Colorado, for a determination as to the size status of Swan.

From the record before our Office, there appears to have been some confusion on the part of the procurement activity as to the timeliness of the size protest of Evergreen. When the president of Evergreen verbally protested the size status of Swan on May 8,

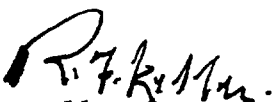
1975, he was advised that 5 days would be allowed to supply additional information. At this point in time, the protest was treated as timely and the letter transmitting the protest to SBA on May 13, 1975, made no mention of whether the protest was timely or not. However, on May 28, 1975, the contracting officer determined the protest to be untimely under Armed Services Procurement Regulation (ASPR) § 1-703(b)(1)(1974 ed.) which requires that size protests be filed within 5 working days after bid opening and so advised Evergreen. On June 6, 1975, the contract was awarded to Swan.

On June 11, 1975, the SBA found Swan to be other than a small business; however, as the protest of Evergreen was untimely, this determination was for use in future procurements.

As stated above, the successful bidder, Swan, certified itself to be a small business. Under ASPR § 1-703(b)(1974 ed.), the contracting officer is required to accept such a certification at face value unless a timely written protest is received from another bidder concerning the size status of the apparent low bidder, or the contracting officer questions the bidder's status and submits the matter to SBA for determination. The contracting officer did not question Swan's size status, nor did he submit the question of Swan's size status to SBA prior to award. Although the contracting officer may, on his own initiative, protest the small business status of a bidder at any time after bid opening, this is a matter of discretion, which we can not say was abused in this case. ASPR § 1-703(b)(2) (1974 ed.).

We have held that, like here, in the absence of a timely size protest, a contracting officer has authority to accept at face value a representation by a bidder that it is a small business and that an award under such circumstances will not be questioned by our Office. TelePicPhonics, Incorporated, B-181501, October 24, 1974, 74-2 CPD 227.

Therefore, we cannot conclude that the award to Swan was improper and the protest of Evergreen is denied.


Acting Comptroller General
of the United States